

NO. 48752-7

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

In re the Detention of J.M.,

Appellant,

BRIEF OF RESPONDENT

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I. INTRODUCTION

J.M. is a 22-year-old man diagnosed with paranoid schizophrenia and obsessive compulsive disorder. He was treated at Western State Hospital on a 180-day involuntary commitment order from the Pierce County Superior Court. On November 17, 2015, a treating psychologist and a treating psychiatrist petitioned the same court for a subsequent order allowing them to involuntarily treat J.M. at Western State Hospital for up to an additional 180 days, subject to placement in a less restrictive setting when available. After hearing testimony from both petitioners and J.M., a Pierce County jury granted the petition on the grounds that J.M. suffers from a mental disorder, is gravely disabled, and that he should be placed in a setting less restrictive than Western State Hospital when available.

J.M. now challenges the sufficiency of the evidence supporting the jury's determination that he is gravely disabled due to a mental disorder. Because substantial evidence was presented to support the jury's findings that J.M. is gravely disabled, the civil commitment order should be affirmed.

II. COUNTER STATEMENT OF THE ISSUES

- A. Does Substantial Evidence Support The Jury's Conclusion That J.M. Is Gravely Disabled as a Result of a Mental Disorder?**

III. STATEMENT OF THE FACTS

J.M. was admitted to Western State Hospital on an order from the King County Superior Court dated March 12, 2015. CP 1-4. On November 17, 2015, Dr. William Crinean and Dr. Kamran Naficy filed a petition to detain J.M. for up to an additional 180 days of involuntary treatment, but also providing that J.M. was ready for a less restrictive alternative placement in the community when available. CP 21-27. Although improvement was noted in J.M.'s condition, the petition alleged that he was on medication watch, engaged in compulsive hand-washing due to Obsessive Compulsive Disorder (OCD) which had made his hands red and irritated, appeared to be responding to internal stimuli at times, and lacked insight. CP 26. J.M. requested a jury trial, which was continued to March 21, 2016. CP 28, 30.

The jury trial commenced on March 22, 2016. RP 4. Over the next several days, the jury heard testimony from Drs. Crinean and Naficy. J.M. also testified, although he did not present expert testimony to counter that of the petitioners. Dr. Crinean, a psychologist, testified first. Dr. Crinean identified J.M.'s diagnoses as schizophrenia and OCD, and described J.M.'s current symptoms as responding to internal stimuli, talking to himself, lack of insight, and excessive handwashing due to the OCD. RP 47, 56. The repetitive handwashing had chapped J.M.'s hands, and he

used too many paper towels, sometimes clogging the toilets on the unit. J.M. was not motivated to engage in treatment to address the OCD. RP 63-65. J.M.'s functioning had nonetheless improved through the course of his medication treatment, even though J.M. would not acknowledge any change in his condition. RP 56. At present, the symptoms of schizophrenia were largely controlled by medication, although J.M. was still suspicious, stayed to himself, and lacked insight. RP 61-62. He had also had several physical altercations with peers. RP 70-71. Dr. Crinean testified that "[i]t is suboptimal, but I think it's as good as it gets for [J.M.]; and the team's belief is that it's unlikely to improve [further]." RP 71.

Dr. Crinean also described J.M.'s deterioration in the community prior to his admission to Western State Hospital, when he came into conflict with the renters in the house where he was staying, allowed toilets to overflow, had spoiled food, and refused contact with mental health providers. RP 58.

In regard to grave disability, Dr. Crinean's opinion was that J.M.'s lack of insight and refusal to acknowledge the need for medications placed him at risk of failing to care for his essential needs of health and safety. He believed that J.M. would neglect his own care, let his living environment deteriorate, and stop wearing clothes. RP 66-67. Even though

Dr. Crinean was recommending a less restrictive placement, his opinion was that, even with supervision and care in a structured environment such as a group home, "I believe that [J.M.] will stop his medication at the first available opportunity." RP 86.

J.M.'s psychiatrist, Dr. Naficy, testified next. RP 116. He confirmed the same diagnoses as Dr. Crinean. RP 121. He testified about J.M.'s history of decompensation in the community, and J.M.'s present symptoms, such as responding to internal stimuli, excessive handwashing, and lack of insight, that were consistent with the diagnoses of schizophrenia and OCD. In regard to grave disability, Dr. Naficy expressed the concern that if J.M. were to be released without care into an unstructured environment, he would become homeless, would not take medications, and would not follow through with medical appointments. RP 137-138.

Finally, J.M. testified on his own behalf. He denied the presence of hallucinations and delusions, and disputed the diagnoses of schizophrenia and OCD. RP 176-177. On cross examination he admitted to talking to himself, but said that he did not hear voices. RP 179. He also claimed that his hands became irritated from scratching, not from handwashing. RP 179-180. When questioned about his ability to care for his basic needs of health and safety, he denied that he had previously deteriorated when

living independently, and claimed that he was not prescribed medications in the community. RP 181-182. He admitted, however, that although he would seek a job, he had no work experience, had never looked for a job, and was not sure how long his savings would last. RP 183, 186, 188. He acknowledged that he could not live with his mother, as he had previously, and was vague about other family members with whom he could live. RP 187-188.

Following the testimony the jury returned a verdict for the petitioners. CP 73-74. The jury found that J.M. had a mental disorder, that J.M. was gravely disabled as a result of a mental disorder, and that treatment should continue in a placement less restrictive than detention at Western State Hospital. Id. The court then ordered J.M. to be detained for up to 180 days of involuntary treatment at Western State Hospital while arrangements were made for a less restrictive alternative placement. CP 75-76. J.M. timely appealed. CP 82-84.

J.M. was subsequently discharged from the hospital on a conditional release to a group home in late April 2016. CP 93-99, 101.

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IV. ARGUMENT

A. Substantial Evidence Supports the Jury's Determination That J.M. is Gravely Disabled as a Result of a Mental Disorder

J.M. contends that the jury erred when it found him gravely disabled. Opening Brief of Appellant (Br. Appellant) at 1. Specifically, J.M. argues that “[t]he State did not show that only involuntary commitment, even to a less restrictive alternative, is necessary to ensure J.M.’s health and safety.” Br. Appellant at 8.

In cases where the trial court has weighed the evidence, the appellate court’s review is generally “limited to determining whether substantial evidence supports the findings and, if so, whether the findings in turn support the trial court’s conclusions of law and judgment.” *In re Det. of LaBelle*, 107 Wn.2d 196, 209, 728 P.2d 138 (1986). But when sufficiency of the evidence is challenged, the test for the appellate court is whether there was any “evidence or reasonable inferences therefrom to sustain the verdict when the evidence is considered in the light most favorable to the prevailing party.” *Goodman v. Boeing Co.*, 75 Wn. App. 60, 82, 877 P.2d 703 (1994). In this case, substantial evidence supports the jury’s determination, and the trial court’s order on verdict, that J.M is gravely disabled. Therefore, the finding below should be should be affirmed.

1. Substantial Evidence Supports The Jury's Conclusion That J.M. Is Gravely Disabled

Under RCW 71.05.320(6)(b), an individual who is currently involuntarily committed for 180 days can be recommitted at the end of his commitment period if the individual continues to be gravely disabled.

“Gravely disabled” is defined as:

[A] condition in which a person, as a result of a mental disorder: (a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety[.]

RCW 71.05.020(17). The statute sets forth two alternative definitions of gravely disabled, either of which provides a basis for involuntary commitment. *LaBelle*, 107 Wn.2d at 202. To establish grave disability under RCW 71.05.020(17)(a), the evidence is required to show “a substantial risk of danger of serious physical harm resulting from failure to provide for essential health and safety needs.” *Labelle*, 107 Wn.2d at 204. In order to establish grave disability under RCW 71.05.020(17)(b), the evidence “must include recent proof of significant loss of cognitive or volitional control[,] . . . [and] must reveal a factual basis for concluding that the individual is not receiving or would

not receive, if released, such care as is essential for his or her health or safety.” *Labelle*, 107 Wn.2d at 208.

In this case, the evidence and the findings support the conclusion that J.M. is “gravely disabled” under both prongs of the statute.¹

a. The testimony supports a substantial risk of serious physical harm to J.M. resulting from failure to provide for essential health and safety needs.

In regard to alternative “a” of grave disability, the petitioners provided the jury with clear, cogent and convincing evidence that J.M. would face “a substantial risk of danger of serious physical harm resulting from failure to provide for essential health and safety needs” if he were released into an unstructured setting without care or support. *Labelle*, 107 Wn.2d at 204. Dr. Crinean testified that his primary concern was that, if J.M. was released, his lack of insight and denial of the need for medications would lead him to stop taking medications, and his condition would deteriorate. RP 67. He would not take care of himself or his living environment, and would not pay bills or even wear clothes, as occurred when he deteriorated prior to originally being detained for civil commitment. RP 67.

¹ J.M. notes that the jury was not asked to specify in its verdict which of the alternative definitions of grave disability was proven. Br. Appellant at 6. The statute has no such requirement. Regardless, no exception was taken to the jury instructions or verdict form, and J.M. makes no assignment of such an error on appeal.

Dr. Naficy testified that his most immediate concern was that J.M. would be homeless and either have to live on the street or in a shelter. In addition, he would not and could not take his medications, one of which was injectable, on his own. RP 137-138. “I believe that if he were to leave the hospital without adequate supervision and a structure around him that he would rapidly deteriorate; and, therefore, we don’t recommend that.” RP 137.

J.M.’s own testimony also supported the conclusion that he was would face serious physical harm because he was unable to articulate a clear plan to meet his needs in the community. Despite more than one year of continuous inpatient treatment, lack of insight still prompted him to dispute the diagnoses of schizophrenia and OCD. RP 176-177. He testified he only took medications in the hospital because “they would give [him] an injection if [he] didn’t take the meds” RP 185. To support himself upon release, he said that he had money saved but was unsure how long it would last. RP 178, 186. While he said he would look for work, he admitted that he had no employment history, had never done a job search and had no job training. RP 178, 183, 188. As to a place to live, his mother would not allow him to live with her, but J.M. vaguely stated that he has “many aunts and uncles that would allow [him] to live with them,” and

that those relatives “live in different locations throughout Washington.”

RP 187-188.

Substantial evidence supports the jury’s finding that J.M. was at risk of serious physical harm should he be outright released from Western State Hospital because he could not care for essential needs of health and safety.

- b. Substantial evidence supports a finding of risk of severe deterioration in routine functioning, as evidenced by recent proof of significant loss of cognitive or volitional control.**

Under alternative “b” of the grave disability statute, petitioners must prove that a patient “manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety.” RCW 71.05.020(17)(b). Again, petitioners “must include recent proof of significant loss of cognitive or volitional control[,] . . . [and] must reveal a factual basis for concluding that the individual is not receiving or would not receive, if released, such care as is essential for his or her health or safety.” *Labelle*, 107 Wn.2d at 208.

Substantial evidence supports a finding by the jury that J.M. would be subject to a severe deterioration in routine functioning as evidenced by

history and recent loss of cognitive or volitional controls. Examples of J.M.'s recent loss of cognitive controls included repeated instances where staff witnessed him responding to internal stimuli, RP 90, 109-112, 126; and lack of insight, RP 62, 96-97. Examples of recent loss of volitional controls included excessive handwashing due to OCD, RP 69, 126, 128; inappropriate sexual remarks towards female peers and staff, RP 69; and an incident that occurred in February 2016 where J.M. intentionally stood in the way of peers watching television and provoked an assault. RP 70-71. He had also previously attempted to assault a staff member in October 2015. RP 71.

These instances of recent loss of cognitive and volitional control do not stand in isolation. When combined with testimony about J.M.'s prior decompensation in the community, RP 58, 124; and current lack of insight, the jury had a highly probable "factual basis for concluding that the individual . . . would not receive, if released², such care as is essential for his or her health or safety." *Labelle*, 107 Wn.2d at 208.

² In seeking a commitment order subject to less restrictive alternative placement under RCW 71.05.320(2), the petitioners were not seeking J.M.'s "release." "'Release' means legal termination of the commitment under the provisions of this chapter[.]" RCW 71.05.020(40). Rather, petitioners sought to "discharge" J.M. to a group home. "'Discharge' means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order[.]" RCW 71.05.020(15).

The purpose behind alternative “b” of the grave disability definition is prevent the “revolving door” syndrome of repeated inpatient admissions and discharges by enabling the commitment of re-stabilized patients. Prior to adoption of this provision, patients could only be involuntarily treated if they had decompensated to the point where they were already in danger of serious harm to themselves. Thus, prong “b” of grave disability helps provide more continuous care. *Labelle*, 107 Wn.2d at 206-207.

Dr. Naficy testified that while J.M. had not yet experienced the revolving door phenomenon due to his young age, his placement in a structured setting, rather than outright release, might minimize the risk of that occurring. RP 141. According to Dr. Crinean, “the biggest thing that will determine a quick readmission is not taking medication. It is the major factor that determines whether a patient returns to us or stays in the community.” RP 86.

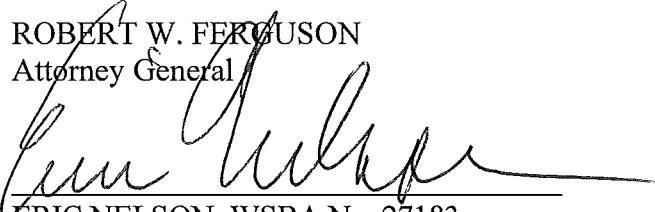
Substantial evidence supports the jury’s determination that J.M. was gravely disabled under alternative “b” of the statute. The jury’s verdict, and J.M.’s subsequent placement in a group home under conditional release terms that ensure his compliance with medications, met the statutory requirements for commitment and provided him with the best chance of success in the community.

V. CONCLUSION

This Court should affirm the trial court's order committing J.M. for up to 180 days of involuntary treatment at Western State Hospital, with placement in a less restrictive setting when available, because substantial evidence supports the jury's finding that J.M. is gravely disabled as a result of a mental disorder.

RESPECTFULLY SUBMITTED this 27th day of October, 2016.

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CERTIFICATE OF SERVICE

I, *Christine Townsend*, state and declare as follows:

I am a citizen of the United States of American and am over the age of 18 years and am competent to testify to the matters set forth herein.

On October 21, 2016, I served a true and correct copy of this **BRIEF OF RESPONDENT** and this **CERTIFICATE OF SERVICE** on the following parties to this action, as indicated below:

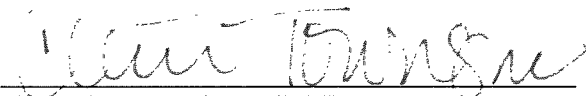
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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 27th day of October, 2016, at Tumwater, WA.


CHRISTINE TOWNSEND
Legal Assistant

WASHINGTON STATE ATTORNEY GENERAL

October 27, 2016 - 1:53 PM

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